

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA**

In re: Neal, Penny

Bky: 24-40833

Debtor(s).

Adv No.:

Penny Neal

Plaintiff,

v.

US Department of Education

Defendant

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**COMPLAINT TO DETERMINE DISCHARGEABILITY OF STUDENT LOAN DEBT**

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Plaintiff Penny Neal files this complaint based on personal knowledge as to Plaintiff's own acts and upon information and belief as to all other matters as follows:

**PARTIES**

**A. Plaintiff**

Penny Neal is a citizen of the State of Minnesota, residing in the District of Minnesota.

**B. Defendant**

Defendant United States Department of Education ("Defendant") is an agency within the meaning of 5 U.S.C. §701(b)(1), with its headquarters located and maintained at 400 Maryland Ave SW, Washington, D.C. 2020 and is believed to be the current holder of Debtor's student loan debt referred to in this complaint.

**JURISDICTION AND VENUE**

1. This adversary proceeding is brought under Case Number 24-40833.
2. This Court has jurisdiction of this Adversary Proceeding pursuant to 28 U.S.C. §

1334(b) and 28 U.S.C. §157(b). This is a core proceeding under title 11 because it concerns a determination as to the dischargeability of a debt.

3. This Adversary Proceeding is brought pursuant to 11 U.S.C. § 523(a)(8), 15 U.S.C. §1601, 15 U.S.C. § 1692 and Federal Rule of Bankruptcy Procedure Rule 7001.
4. Venue is proper in the district of Minnesota pursuant to 28 U.S.C. § 1409 because this matter arises in and is related to a bankruptcy case in this district.
5. The Plaintiff hereby consents to entry of a final order judgment by the bankruptcy court pursuant to Federal Rule of Bankruptcy Procedure 7008(a).

### **FACTUAL AND PROCEDURAL BACKGROUND**

6. The Debtor attended Minneapolis Community and Technical College, North Hennepin Technical College, and Saint Paul College
7. She borrowed the money in question for this education and living expenses at the time.
8. The Debtor currently works at Lavish Health Services as an office assistant making approximately \$3,135 per month after paycheck deductions.
9. The loans from Defendant are loans made, insured, or guaranteed by a governmental unit and/or qualified educational loans as defined in section 221(d)(2) of the Internal Revenue Code. As such they are excepted from discharge unless their exception would "impose an undue hardship on the debtor and the debtor's dependents."
10. The Debtor made the following good faith efforts to repay the loan: she has made some payments and has participated in income-driven repayment plans.
11. The Debtor supports a household of 3. Since commencement of the bankruptcy she has taken custody of her 2 grandkids because the parents proved unable to care for the kids.
12. The Debtor is 49 years old

### **THE BANKRUPTCY FILING**

13. Due to exigent financial circumstances the debtor filed this bankruptcy on

03/28/2024.

14. Under a standard 10 year repayment plan the Debtor's student loan payment would be \$1,030.75
15. the Debtor's bankruptcy schedules showed an available income after paying basic living expense of only \$0.
16. Paying \$1,030.75 per month for 10 years for these student loans is an undue hardship because it would leave the Debtor unable to afford even a minimal standard of living for herself and the two dependent grandchildren.

**CLAIM FOR RELIEF**

17. Plaintiff re-alleges and incorporates by reference all of the allegations contained in all of the preceding paragraphs.
18. Plaintiff is entitled to discharge of her student loan debt, either in whole or in part, because repayment would constitute an "undue hardship" on her.
19. the Debtor lacks a present ability to pay these loans because the standard repayment amount is greater than the amount remaining after subtracting the National Collection Standards from her income.
20. The Debtor lacks a future ability to pay because the Debtor can't meaningfully increase income or decrease expenses, and does not have non-essential valuable assets that could be sold to pay the student loans.
21. The Debtor has made good faith efforts to engage with the servicers and/or payon the student loans in question.
22. Plaintiff meets the standard for undue hardship as articulated in the Brunner and Totality of the Circumstances tests, as well as the assessment factors outlined in the new guidance issued by the Department of Justice in coordination with the Department of Education on November 17, 2022 regarding student loan bankruptcy litigation. Accordingly, Plaintiff prays this court discharge her student debt in part or in total.
23. The Plaintiff DOES NOT demand a jury.
24. The Plaintiff consents to entry of a final order or judgment by the Bankruptcy

Court in this adversary proceeding.

**PRAYER**

25. In light of the foregoing, Plaintiff requests judgment entered against the Defendant(s) as follows:

1. determination that the loans to Defendant were discharged;
2. enjoining further collection of these loans;
3. other such relief as the Court deems just and proper.

Respectfully submitted,

/s/ Andrew C. Walker

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Ethan Mustonen #399356

4356 Nicollet Ave

Minneapolis, MN 55409

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(612) 824-4357

# VERIFICATION

I, the Plaintiff in this case do swear under penalty of perjury that the following is true to the best of my knowledge, information, and belief.

*Penny Neal*

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Penny Neal

Dated: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

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I, Andrew C. Walker, declare under penalty of perjury that I served the adversary summons and complaint by certified mail to:

Andrew Luger, US Attorney  
600 U.S. Courthouse  
300 South 4th St. Ste 600  
Minneapolis, MN 55415

US Department of Education  
400 Maryland Ave SW  
Washington, DC 20202

Attorney General of The United States  
US Department of Justice  
950 Pennsylvania Ave NW  
Washington, DC 20530-0001

Dated: 05/20/2024

/s/ Andrew C. Walker